
A NEW PARADIGM FOR DISTRICT-FEDERAL RELATIONS

Finding a Fair Balance Between Local and Federal Priorities in Governing the District of Columbia

Although the District has emerged from the depths of financial and management crises, many challenges still remain: decaying infrastructure, a struggling education system, and a major need for neighborhood revitalization, to name only a few. In order to meet these challenges, the city needs strong government, active citizens, and a partnership with the most dominant presence in the District, the federal government.

Over the course of its history, the District-federal relationship experienced dramatic changes. At some points, citizens and local government gained a greater voice in local affairs. At other points, the federal government tightened its reigns on the District. The purpose of this chapter is to (a) examine the challenges inherent in the current District-federal relationship and (b) propose resolutions to these challenges that both entities will find beneficial.

Specifically, the District and federal government must resolve the following issues:

- Congress' micromanagement of local budgeting and legislation hampers planning and disrupts service delivery.
- The large federal presence requires major service delivery for which the District receives no compensation.
- Taxation without representation in our nation's capital flies in the face of American democracy.

The following discussion examines each of these issues in detail and proposes solutions that may be adopted by the District and federal governments.

Balancing Local Autonomy with Congressional Oversight

Article I of the U.S. Constitution empowers Congress to control all legislation for the District, but allows for substantial discretion in doing so. Unfortunately, Congress' choices in exercising that power greatly impede the District's ability to plan programs and deliver services that citizens need and want. The following section examines the competing interests faced by the Congress and the District and proposes options for a mutually beneficial solution.

The Case for Local Control

Congress Drives a Wedge Between Planning and Implementation

In all of Congress' involvement in local affairs, perhaps the greatest disruption is felt in the District's budget process. A government's annual budget serves as the critical nexus between public priorities and agency operations. It allows every manager and elected leader to assess service levels, identify new needs and priorities, and obtain and spend the resources needed to serve citizens. When this process fails to operate effectively, the results are felt on the streets, in the classrooms, and in homes across the city. The following discussion explains these disruptions and presents the case for greater budgetary and legislative autonomy in the District.

- **Nine-month gap between planning and implementation.** First, although the Constitution does not require it to do so, Congress chooses to review and vote on the District's budget. To accommodate this lengthy process, the District must conduct its annual planning nine months in advance in order to allow Congress the time to dissect, discuss, and eventually approve the District's budget in the form of a congressional appropriation. This cycle requires spending decisions to be made long before the beginning of the fiscal year, and therefore does not allow District agencies to account for changes in the needs of citizens and program operations. As a result, each manager must begin the year based on spending decisions made almost a full year prior and with limited flexibility to make changes.
- **Additional delays caused by continuing resolutions.** Second, Congress' insertion in the budget process also creates delays through continuing resolutions. Typically in recent years, Congress has failed to approve the District's appropriation until well after the beginning of the fiscal year, extending even further the lag between local spending decisions and the ability of managers to implement them. Table 13-1 presents recent delays.

Table 13-1
Congressional Delays in Approving District Spending

Fiscal Year	Delay
1996	7 months
1998	1½ months
1999	3 weeks
2000	1½ months
2001	1½ months

Every time Congress creates a delay by passing a continuing resolution, it prevents the District from investing its own funds in new programs or other important new spending measures. To add irony to this challenge, delays in the District's annual appropriation generally occur due to political standoffs between the Congress and the White House – standoffs that typically have nothing to do with the District.

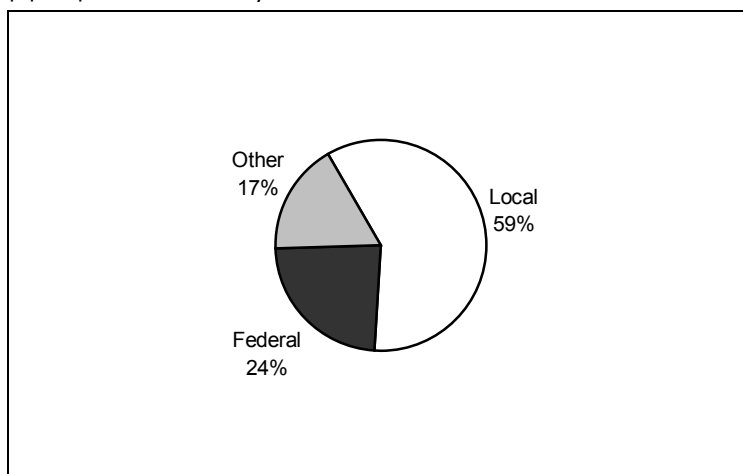
- **Act of Congress required for major budget reallocations.** Third, once it finally approves the budget, Congress places tight restrictions on the District's ability to reallocate dollars to account for changing needs. Cities and states across the country exercise substantial discretion in reallocating funds as needed when emergencies arise or new priorities emerge. For the District to reallocate sizable amounts of funding from one major area to another, an act of Congress is required.

- Federal intervention in local budget decisions.** Fourth, the vast majority of the District's budget comprises local tax dollars paid by people in the District. Federal funds constitute less than one-fourth of the budget and those funds, for the most part, consist of entitlements (e.g., Medicaid, TANF, school lunch) that all states receive. In fact, the greatest portion of the District's appropriation consists of Congress appropriating the District's own local tax dollars as if they were federal funds. Table 13-2 demonstrates this breakdown, using the FY2001 budget as an illustration. Aside from the operational impacts, this control over local revenues and expenditures grossly contradicts the principle of citizens empowering those who govern them.

Figure 13-1

The Vast Majority of Funds in the Congressional Appropriation Are Local Tax Dollars

(Source: FY2001 Appropriations Act)



- Federal intervention in local policy decisions.** The absence of accountability extends not only to decisions about how local funds should be spent. It also extends to other policy choices that Congress has imposed in recent years. To cite just a few examples, Congress has:
 - Superseded Council-enacted procedures for the establishment of public charter schools;
 - Voided the Legalization of Marijuana for Medical Treatment Initiative of 1998;
 - Prohibited the use of local funds to provide abortions to citizens who request them;
 - Restricted needle exchange programs;
 - Limited the scope of the District's Human Rights Act;
 - Repealed a requirement that Career Service employees reside in the District; and
 - Legislated civil fines for possession of cigarettes by minors.

In addition to intervening on the content issues, Congress also requires a 30-day review period on all civil legislation and a 60-day review period on all criminal legislation. Because American citizens who live in the District have no voting representatives in Congress, that body has no accountability to those it governs and therefore lacks adequate claim to make decisions for them.

In considering a plan to remedy these issues, it is important to note that Congress has established strong precedents for increasing the amount of autonomy exercised by the District. Upon the creation of the capital city, its residents maintained their citizenship in the states of Maryland and

Virginia (the two states that ceded territory to form the District), and continued electing representatives to Congress. In 1871, Congress again recognized the need for local decision-making and established a locally-elected government, although it lasted only three years. In 1973 Congress passed the DC Home Rule Act providing for locally-elected leadership. As a next step, Congress voted in 1978 to amend the Constitution to provide District residents full voting representation in the House and Senate. Although the states failed to ratify this amendment, the Congress' support demonstrated a strong historical trend toward providing increased self-government for citizens in the District.

Having examined the District's concerns regarding budgetary control, this discussion now examines Congress' justification for its role in this process.

Figure 13-2

Evolution of the District-Federal Relationship

Early History

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|------|--|
| 1791 | District created, residents maintained representation in Congress |
| 1801 | Congressional representation ends, local government established |
| 1871 | Congress establishes locally elected territorial government and provides one non-voting delegate to House |
| 1874 | Congress revokes territorial government after financial scandal, abolishes delegate to House, and creates presidentially-appointed Board of Commissioners on a temporary basis |
| 1878 | Congress makes temporary Board permanent |

Recent History

- | | |
|------|--|
| 1960 | 23 rd Amendment gives District residents right to vote in national elections (for president and vice president) |
| 1967 | Board of Commissioners replaced by presidentially-appointed Mayor-Commissioner and Council |
| 1968 | Elected Board of Education established |
| 1973 | Home Rule Act |
| 1978 | Congress approves District Voting Rights constitutional amendment |
| 1985 | Amendment fails when ratified by only 16 of required 38 states |
| 1993 | District's delegate in House given limited voting rights |
| 1995 | Congress establishes DC Financial Responsibility and Management Assistance Authority (Control Board) after financial crisis, and eliminates voting rights of District's delegate |
| 1996 | Control Board assumes control of public schools |
| 1997 | Congress passes Revitalization Act and Control Board assumes control of District's major departments |
| 1999 | Control Board relinquishes to Mayor control of District's major departments |
| 2001 | Control Board relinquishes control of Board of Education after appointed/elected board takes |

	office
2001	Terms for ending control period met after District achieves fourth consecutive balanced budget

The Case for National Control

Constitutional Mandate and a History of Poor Financial Management

The U.S. Constitution specifically empowers Congress to establish a federal district and to exercise complete legislative control over that District:

The Congress shall have Power ... To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States... (Article I, Section 8)

This provision grants Congress the power and charges it with the responsibility to oversee legislative matters in the District. The language also provides substantial flexibility in defining its role, and Congress has embraced this flexibility by changing the governance structure of the District repeatedly throughout its history (See Figure 13-2).

As further justification, the Congress has invoked failures in local financial management to justify increased control over District affairs. The first locally elected government of the District sat for only three years (1871-1874) before a financial scandal motivated the Congress to disband that government and replace it with an appointed Board of Commissioners. Over a century later, another financial crisis led Congress to assume control once again, creating a Control Board and independent Chief Financial Officer to directly manage financial functions.

Taken together, these two reasons support an important role for the Congress in the oversight of District affairs. To balance this interest with those of the District, the following section proposes several options for restructuring the District-federal relationship to the benefit of both parties.

A Balanced Solution: Increased Autonomy Based on Satisfactory Performance

Congress' constitutional charge to oversee the nation's capital continues, but, at the same time, the District must be allowed to exercise the budgetary and legislative autonomy needed to effectively plan and execute the service delivery that its residents need and want. To satisfy both interests, the following proposal merits discussion.

For several decades now, private companies have recognized that the command and control model of management fails to maximize performance, and they have migrated toward setting performance goals and providing organizations the flexibility needed to meet those goals. In the recent wave of reinventing government, public sector organizations began successfully adopting that model as well.

Over the course of recent history, three trends emerged in the District-federal relationship: Congress has (a) incrementally distinguished and separated the role of the District government from that of the federal government; (b) increasingly recognized the right of District residents to voting representation in the local and national legislatures; and (c) reduced the ad hoc nature of District-federal budgetary and legislative interactions, replacing them with more structured arrangements that minimize the need for continual congressional oversight and provide the District with the opportunity to earn increased autonomy. The following examples illustrate this trend:

- **Home Rule Act.** In 1973 Congress passed the Home Rule Act, which recognized the District and its citizens as a distinct polity with a right to self government, separate from the functions of the “federal city.”
- **Constitutional amendment.** Congress passed the District Voting Rights constitutional amendment of 1978, which provided two senators and a representative to the District. (This amendment failed ratification by the states and, therefore, never took effect.)
- **Formula-based federal payment.** Congress converted the federal payment from a fixed sum to a variable amount that computed the cost of services that should be paid for by the federal government. With this change, the federal government further acknowledged the distinct status of the District, and structured its financial relationship to limit the need for on-going discussion over the level of support to be received from the federal government.
- **Increased autonomy based on performance.** When Congress imposed the Control Board in 1995, it created objective performance targets that would allow the District to regain the limited autonomy held previously.
- **Revitalization Act.** In 1997, the Congress passed the Revitalization Act, which took the next step toward defining federal financial responsibilities as distinct from those of the District government. Specifically, this act reassigned the unfunded pension liability, costs of incarcerating felons, and other federal responsibilities back to the federal government.

Taken together, these actions demonstrate an increasing recognition by Congress that the District’s people merit greater autonomy, voting representation, and more structured, performance-based guidelines to govern the District-federal relationship.

The Control Act proves most helpful in devising a mutually beneficial solution for the current state of District-federal relations – specifically, because it used performance targets to allow the District to end the control period and regain an increase its legislative and budgetary autonomy.

In this act, Congress specified that the District government must meet two specific targets to merit an end to the control period: achieve four consecutive balanced budgets and regain access to credit markets (i.e. earn an investment-grade bond rating).

The terms of this requirement, codified in federal law, provided a solid and objective basis by which the District could regain its autonomy – providing an effective incentive for local leadership to manage the District’s finances wisely. As a result, this government met the targets as of September 30, 2000. In addition, by that same date the District met an additional target (imposed later by the Congress) of establishing almost \$400 million in financial reserves.

By establishing specific targets to be achieved over specific time frames, Congress fulfilled its responsibility to provide oversight while at the same time providing local leadership a reasonable level of flexibility to achieve financial recovery. This success provides a model for a solution to the current challenge in District-federal relations. Based on this successful model and in keeping with its own precedent, Congress should continue to grant the District increased budgetary and legislative autonomy based on the accomplishment of agreed-upon performance goals.

Performance Targets for Earning Budget Autonomy

For example, once the control period ends officially, the Congress should establish a new set of criteria through which the District can earn a greater level of budgetary and legislative autonomy. This agreement should include the following terms:

- **Definition of budgetary autonomy.** Upon achieving the performance targets specified below, the District's budget will be exempted from the congressional appropriations process and may be allocated, approved, and reallocated exclusively by local leadership.
- **Performance targets.** To achieve budgetary autonomy, the District must meet the following conditions for four consecutive years, at which time budgetary autonomy will be granted:
 - a. maintain a balanced budget;
 - b. maintain an investment grade bond rating; and
 - c. maintain financial reserves equivalent to seven percent of its annual operating budget, allowing some flexibility to draw on reserves and replenish at another time.

The earliest the District could meet these criteria is at the end of FY2003. After the achievement of autonomy, these same criteria must be met each year in order to maintain autonomy.

- **Legislative autonomy.** Congress will continue providing oversight by holding hearings and reviewing performance information on a regular basis, but it would no longer appropriate the District's budget, nor would it maintain the current 30 day review period for civil legislation, and 60-day period for criminal legislation.
- **Revocation of autonomy.** If, in any fiscal year after autonomy is earned, the District failed to meet any of those criteria, the Congress could revoke budgetary and legislative autonomy, and the District must meet the criteria established above in order to regain it.

This solution allows the Congress to fulfill its constitutional charge to provide oversight, while at the same time providing the District with the budgetary and legislative autonomy needed to deliver services effectively. It also follows the precedent established by prior congressional actions, and it reflects a shift toward modern management and oversight practices adopted by the most efficient organizations.

As a mutually beneficial solution is identified for the *process* of budgetary and legislative decision-making, the *substance* of those choices must also be addressed. All citizens of the District – private individuals and businesses alike – must contribute financially to the operations of the city. The federal government, the largest and most imposing citizen of all, should do so as well. The following section defines the justification for such contribution, and recommends the means for doing so.

Balancing Federal Prerogatives and Fair Compensation for the District's Services

The District provides extensive services for the federal government and the workforce that supports it. From local streets to police and fire protection, from snow removal to trash collection, the District provides critical services that allow federal, not-for-profit, and private organizations to function. When attempting to obtain compensation for these services, however, the District faces severe restrictions imposed by the federal government. From the perspective of the federal government, these restrictions represent a reasonable exercise of federal prerogative in the nation's capital, but for the District, these restrictions prevent the collection of fair compensation for services rendered – compensation that proves critical to investing in infrastructure and service

improvements. The following section examines these issues, then proposes solutions that balance the interests of the District and federal governments.

The Case For Compensation

The District Provides Extensive Services and Receives No Compensation

The recent financial crisis of the early 1990s left the District with a reputation for financial mismanagement and governmental incompetence. Many observers failed to recognize, however, the missteps of the federal government that also propagated the crisis. The federal government:

- Saddled the District with a pension fund for former federal (now District) employees – a fund with inadequate assets to cover expected payouts;
- Required the District to continue operating corrections services (adult probation, defense, pretrial, parole, and offender supervision services) and federal courts with inadequate compensation; and
- Placed full responsibility for the 50 percent state share of Medicaid costs on the District, although state governments typically share many of these costs with cities.

After extensive study and appeals by the District, the federal government acknowledged these issues and addressed many of these inequities through the National Capital Revitalization and Self-Government Improvement Act (Revitalization Act) of 1997. In doing so, however, the federal government also eliminated the annual federal payment, which was intended to compensate the District for a variety of services.

Although the Revitalization Act included some provision for a future federal payment “as may be necessary,” no new rationale for such a payment has been defined. Instead, Congress has taken varied courses, providing \$190 million in discretionary funds in FY1998 and targeted subsidies in subsequent years that follow no pattern, but seem only to focus on unique priorities or interests of appropriators in any given year. As such, the challenge remains to define a rational and systematic basis and corresponding amount for an on going federal payment. This chapter attempts to reach that goal.

The key step toward doing so is to recognize the following: In essence, the Revitalization Act addressed only the most obvious instances where the District had been saddled with federal responsibilities. Several other studies, including *Financing the Nation’s Capital* – known as the Rivlin Commission Report (1990), the *Task Force on DC Governance* (1997) , and *The Orphaned Capital* (1997) – have chronicled many other ways in which the federal government imposes extreme demands on the District without compensation. In total, these demands cost the District what is estimated to be at least \$1.7 billion in revenue annually – an amount equal to one-third of the District’s annual budget. The sources and costs of these demands are summarized in Table 13-2, and described in detail thereafter.

Limitations on the height of buildings

The November 1990 report entitled *Financing the Nation’s Capital: The Report of the Commission on Budget and Financial Priorities of the District of Columbia* cited the height restriction as a key limitation on the ability of the District to raise adequate revenue. The height restriction limits the revenue raising capacity of the District because it reduces the amount of taxable real property in the District.

Table 13-2
Cost of Federal Restrictions

Federal Restriction	Estimated Annual Cost to the District
1. Prevention of taxing income earned by non-residents	\$880 million
2. Exemption of federal and not-for-profit organizations from taxation	\$500 million
3. Exemptions on other specific income, sales, and property taxes	\$120 million
4. Resistance to providing compensation for services rendered by the District government	\$190 million
Total Annual Uncompensated Cost to District	\$1.7 billion

Prevention of taxing income earned by non-residents

The congressional limitations on the District's ability to tax income earned in the District relate to the explicit congressional prohibition on taxing the income of non-residents. This limitation has dramatically constricted the District's tax base and forced District residents to bear a greater tax burden compared to residents of other jurisdictions.

The restriction against taxing non-resident income is onerous because, first, it applies only to the District. Congress has imposed this limitation only in the District because only in the District does it exercise plenary legislative control. It has no authority over local taxation in any other state or city. All states that have income taxes tax non-resident income. Congress has not singled out any other state or city and prohibited them from taxing non-resident income. Second, due to the nature of the Washington area economy, this prohibition significantly restricts the ability of the District to raise revenue while providing a revenue windfall to Virginia and Maryland.

In fact, the *Orphaned Capital* estimated that the income earned by non-residents working in the District exceeds DC residents' earnings outside the city by \$19.9 billion. Based on this discrepancy, the study estimates that the District could raise approximately \$880 million in additional revenue taxing non-residents working in the District at Virginia income tax rates, the lowest in the region. Based on a flat, city-type non-resident income tax rate, the District would raise \$180 million for each one percent charged.

Exemption of federal and not-for-profit organizations from taxation

The *Orphaned Capital* also estimated that 41 percent of District property is exempt from taxation by the Federal government. Included in this estimate are:

- Federal government property;
- Traditional local exemptions mandated by Congress (such as churches and educational institutions); and
- Foreign property and property exempted by special act of Congress and executive order of the President.

The amount of revenue from these properties depends on the assessed value and the property tax rate. For example, the Brookings study estimated that based on the commercial property tax rate of \$2.15 per \$100 of assessed value, the exempt property would generate \$609 million in property tax revenue if taxable. However, using a proposed lower commercial property tax rate of \$1.35 per \$100 of assessed value this property would generate \$382 million in property taxes.

Exemptions on other specific income, sales, and property taxes

Congress has restricted the District's ability to tax specific items. The following table lists the key items that are exempt by federal action.

Table 13-3
Federal and Congressional Tax Exemptions

Item	Forgone Revenue (FY1995)
Sales Tax on Military Purchases	\$10.9 million
Sales Tax on Diplomatic Purchases	\$11.2 million
Income Tax on Military Personnel	\$21.1 million
Income Tax on Diplomatic Personnel	\$25.6 million
Exempt Personal Property*	\$52.6 million
Total	\$121.4 million
*Federal and Special Act of Congress exemptions	

These exemptions further narrow the District's tax base. As a result, the District must tax a smaller base at a higher rate to generate the revenue necessary to provide services to the District's citizens. No other city faces similar constraints that so greatly impact its ability to raise revenue.

Resistance to providing compensation for services rendered by the District government

The unusual costs and requirements imposed by the federal government on the District as the seat of government include direct unreimbursed costs associated with providing police and fire services at the multitude of special events, parades, demonstration and marches that take place annually in the District. These costs currently are not reimbursed because the federal government does not pay for services through direct payment or indirectly through property taxes. Estimating the cost of direct provision of these services is inappropriate because these services are not provided on a user fee basis. Instead, the estimate of property taxes that the federal government would pay, as discussed previously, serves as a proxy for the cost of all unreimbursed services provided by the District to the federal government – both typical government services and services related to the unique nature of the District as the nation's capital.

Requirement that District perform state functions

Various studies have identified that the District's status as a state, county, and city creates excessive complexity for the District government, and that if the federal government denies the District statehood, then it should not require the District to fund state functions, which include various education, health, and highway programs.

Having identified the reasons why the District merits compensation, this discussion now turns to the federal perspective, presented in the following section.

The Case Against Compensation

The District Also Benefits from Federal Presence and Partnerships

Both the federal and District governments acknowledge that the District also benefits from the large federal presence here. First, federal agencies and associated industries (lobbyists, legal offices, hotels, etc.) constitute a huge local industry that substantially drives economic development. Second, these industries draw a strong workforce from around the country, some of whom also may provide service to the District. Finally, in addition to the standard grants that most local governments earn (e.g., highway funds, Medicaid, housing funds), the District sometimes receives focused attention from federal agencies interested in providing extra effort in their own back yard.

These facts do not suggest that the federal government holds the position that the District deserves no compensation. To the contrary, the Revitalization Act provided for some federal payment as described earlier in this chapter, and the federal government has made annual contributions regularly. Table 13-4 presents the amounts and purposes of each of these payments:

Table 13-4
Federal Contribution

Fiscal Year	Federal Contribution	Purpose
1997	\$665 million	General operations
1998	\$198 million	General operations--reduced as a result of the Revitalization Act
1999	\$180 million	Year 2000 preparations and other items
2000	\$24 million	Tuition Assistance Program and other items

In this analysis, two key trends emerge: First, federal contributions have declined substantially, even in the post-Revitalization Act years. Second, the federal government has become less interested in providing lump sum discretionary payments, and now prefers to provide targeted funding for more specific purposes.

Nevertheless, the federal government continues to recognize a substantial responsibility for contributing to the continued development of the District, and the new presidential administration has made a strong commitment to partnership with the city during the next four years. The next section presents recommendations for the nature of this partnership – recommendations that serve both the federal desire to target specific outcomes, and the District’s need to obtain reasonable compensation for federally-imposed restrictions and the costs associated with the federal presence.

A Balanced Solution: Building a Goal-Oriented Partnership, Without a Lump-Sum Payment

A solution to the issue of compensation must serve the interests of both the federal government and the District. Both of these entities would agree that (a) the District provides critical services that support the fundamental operations of the federal government, and (b) even though the federal government helps drive the District’s economy, it still shares a commitment to continue investment in the enhancement of District services.

General Partnerships

Within these parameters, several options for investing in District services should be pursued. Specifically, the federal government should commit the following investments to compensate for the restrictions currently imposed:

- **Fair share regional tax credit.** Late last spring Congresswoman Eleanor Holmes Norton introduced a comprehensive tax incentive package to bolster the District's economy. A major component of that package is the District of Columbia Non-Resident Tax Credit Act. The amount of the proposed credit is two percent, the average national commuter tax rate. The proposed two percent DC wage tax would be on the earnings of non-residents. The offsetting credit would be claimed on the filer's federal income tax. Once implemented, this proposal would generate about \$400 million for the District. The two percent credit would spread the obligations of supporting services in the nation's capital among those who benefit from them.
- **Federal Payment in Lieu of Taxes (PILOTs) on federally owned property.** PILOTs allow entities not subject to taxation to support services in jurisdictions in which they conduct business. The District's tax base, especially for federally owned real property, is greatly affected by the federal presence here. PILOTs are a viable option for compensating the District for services that support federal activities.
 - Federally owned property occupies 40 percent of the District's total acreage.
 - Federally owned property constitutes approximately 26 percent of the total value of all real property in the District.
 - The revenue impact would be approximately \$400 million in FY2001 if federally owned property were taxed at \$1.95 per \$100 of assessed value.
 - Many studies have argued in favor of federal PILOTs – the most recent being *The Orphaned Capitol*.

Federal PILOTs to state and local jurisdictions are not out of the ordinary. In Oregon, for example, the state receives a portion of all proceeds from the sale of timber from federally owned timberland.

- **Aligning District tax burdens with those of Maryland and Virginia.** The absence of federal support places higher burdens on District taxpayers, even after full implementation of the Tax Parity Act.
 - The District's individual income tax burden is about 34 percent higher than if District taxpayers were taxed at Virginia's rates. It is also higher than in Maryland.
 - The District's real property tax burden is 54 percent higher than Montgomery County, and 15 percent above that of the City of Alexandria.

Under this recommendation, the federal government would reduce federal tax rates in the District to bring the overall tax burden in line with those of surrounding jurisdictions.

In addition to these general funding partnerships, the federal government should consider specific partnerships that align the priorities of both the administrations. The following section examines such partnerships in greater detail.

Partnerships for Specific Priorities of Both the District and Federal Government

Last year the President's budget contained a direct appropriation of \$31 million for the District, including \$17 million to fund in-state tuition for District residents going to college around the country. The federal government should at least match this total with support in several key areas.

- **Improving low-performing schools.** The District knows that improving public schools is at the core of our revitalization and is pleased with the President's focus on low-performing schools and early education. Based on a mutual focus on performance, the city requests \$10 million to
 - Reconstitute four chronically low-performing high schools;
 - Provide incentives for teachers and principals to work in challenged schools; and
 - Expand pre-K and early reading programs.
- **Promoting welfare to work and adult literacy.** The District has a high number of TANF participants needing intensive support to leave the welfare rolls and obtain long-term employment with good wages (see Chapter 10). As many as 37 percent of adults in the District read below grade level, virtually locking them out of the growing economy (see Chapter 11). As Secretary Thompson showed in Wisconsin, transferring people to self-sufficiency requires considerable human development resources. The city seeks \$10 million to
 - Expand citywide capacity to provide adult education courses to move citizens to literacy level 3 and toward earning GED diplomas;
 - Provide new adult education services in depressed communities;
 - Establish family literacy programs; and
 - Support nonprofit, community-based organizations, including faith-based organizations, in providing literacy services.
- **Health care reform.** The District is about to complete a very difficult remaking of its public health safety net – moving from a system focused on centralized emergency room care to one focused on preventive medicine and community-based facilities. Besides addressing the tragically poor health indicators in our city, this improvement will allow the city to fund health insurance expansion and other primary care initiatives. Few cities could implement such a transformation without support from a state government. Accordingly, the District requests \$5 million to
 - Establish a program through the Department of Defense purchasing arrangements to provide pharmacy drugs to the uninsured; and
 - Provide support and technical assistance to private, nonprofit clinics that serve the uninsured.

Federal Compensation for State Responsibilities

A final option for federal compensation is the assumption of responsibilities that are analogous to what states perform for cities that reside within. Proposed items include the following:

- **Schools** – Of the 146 active schools, 91 (which equates to 62 percent) are over 45 years old, and only eight have ever had total renovations, so over-aged and obsolete building components have become the rule rather than the exception throughout the entire school inventory. The total cost for renovating all schools is estimated to be \$1.5 billion over the next 10 years. The six-year

CIP includes approximately over \$800 million for school construction, leaving approximately \$600 billion to be funded over the following three years in order to satisfy the full unmet need.

- **Technology Infrastructure** – Having met the challenges of Y2K compliance, the District must now continue building the technological capacity to support a 21st century government and economy. To equip the government with the wide area network, telecommunications, and information systems, the District requires \$46 million.
- **Streets** – To adequately rebuild, resurface, and maintain our 1,400 miles of streets and 229 bridges, the District must commit almost \$4 billion over the next 10 years. The CIP invests over \$1 billion for the coming six years, leaving a need of up to \$3 billion to be funded over the following three years.
- **Tree planting and care** – The importance of our "urban forest" to the quality of life in Washington is difficult to overestimate. Urban trees provide energy savings, water pollution abatement, flood control, privacy, wildlife habitat, and feelings of community well being. Though once known as the "City of Trees", because of the majesty of its tree resource, the District has, in the past decade, seen the size of its street tree population decimated.

To address this need, and to remedy a quarter century of governmental neglect, the District proposes the creation of a Federal Tree Trust Fund, with a \$7 million annual federal payment, so that the nation's capital can return to its previous stature as the nation's leading urban forest.

- **Anacostia River cleanup** – The Anacostia River runs through the soul of Washington-it is part of history and collective consciousness. We want to clean up this river not just for environmental reasons, but because keeping our rivers pure is fundamental. The cost of this effort would total over \$1 billion.
- **Safe haven for insurance sales** – The federal government could expand the current enterprise zone legislation enacted by Congress to waive federal withholding taxes on foreign insurance sales from companies located in those enterprise incentive zones. By becoming a center of international web-based insurance, the District would be positioned to become the jurisdiction of record for international Internet transactions. The key to this proposal, however, is for the current federal enterprise zone legislation to be amended to include insurance companies.
- **Enterprise zone expansion** – The federal government could expand the empowerment zone/enterprise community program for the District of Columbia by extending the programs' sunset dates and by enhancing the federal tax credits and other federal and district incentives to generate new employment and economic activity. Other cities granted empowerment zone status were granted a 10-year period to realize desire comprehensive community development predicted in the empowerment zone legislation. The District was only granted five years. Therefore, the District's sunset date should be December 31, 2008.
- **Work Opportunity Tax Credit extension** – This worthy program focusing on youth, poverty adults and others residing in the DCEC and employed either within or outside of the DCEC (including summer employment) was scheduled to expire July 30, 1999. The program has been extended to December 31, 2002 but should be further extended in the District to December 31,

2008 to coincide with the recommended dates for the DC Empowerment Zone.

- **Citywide Empowerment Zone** – An additional proposal is to declare the entire District of Columbia as an Empowerment Zone. Given the economic constraints placed on the District, Congress should level the playing field by declaring all segments of the District as a federal Empowerment Zone. The induced economic activity throughout the District will add to the local tax and employment bases necessary to sustain Washington DC as a fiscally viable governmental entity.
- **Enterprise Community expansion** -- Alternatively, if the District is not declared an Empowerment Zone in its entirety, we propose the expansion the DC enterprise community program (DCEC) neighborhoods to include additional poverty threshold census tracts identified in Census 2000, and the addition of features that will enhance the program such as the employment tax credit and development zone.
- **Non-resident tax credit** – By approving a two percent local wage tax on non-residents working in the District of Columbia, and crediting this amount back to them through the federal income taxes, the federal government would provide a method of recovering some of the cost of federal restrictions without burdening local and regional businesses or individuals. Over \$400 million could be generated annually with a two percent wage tax rate.
- **Continuation of the homebuyer's tax credit** – This option would make permanent the \$5,000 Homebuyer Credit, which is perhaps the most successful economic stimulus in the city's history. The credit offers significant evidence that a tightly targeted tax incentive can have a major turn-around effect on a specific problem confronting a city. This credit is currently set to expire, and should be made permanent.

The District has exercised considerable fiscal restraint – passing four consecutive balanced budgets while actually cutting taxes. Support for the initiatives above would provide critical assistance in addressing social needs that, if not addressed, could impair the District's continued financial recovery and overall progress towards being a desirable place to live, work, and raise a family. Because the federal government shares a vested interest in this outcome, a partnership toward that end is appropriate and essential.

In fact, many argue that the federal government should fund the entire budget of the District because collecting federal taxes violates a fundamental principle of American democracy: Those who govern must be elected by the governed. The current state of governance constitutes taxation without representation, the exact offense that spawned the formation of this nation. The final section of this chapter examines in detail the issue of voting representation in Congress.

Taxation Without Representation in the Seat of Democracy

As presented in the historical timeline above, residents of the District have struggled through over 200 years to find a governance system that provides democratic representation. Currently, no voting member of the U.S. Congress represents these residents, and only toward the end of the 20th century could they participate in elections for local leadership and President of the United States. The

following discussion examines the case for and against voting representation for the District's residents, and proposes a balanced solution that serves the interests of all involved.

The Case for Voting Rights In Congress

Taxation Without Representation

In 1776, the founders of the United States fought a revolution to end the tyranny of taxation without representation. In stark irony, the government born of that conflict now exercises the same tyranny against the residents of its own capital.

How the District Became Disenfranchised

When the U.S. Constitution was written, it provided for the creation of a federal district, but gave no explicit consideration to the representation of that District's residents. The framers failed to express their intentions on this issue during the Constitutional Convention in 1787, and the language of the Constitution itself is susceptible to conflicting interpretations.

To remedy this situation, the Congress has taken several approaches, demonstrating an appreciation for the injustice and an interest in rectifying the situation. Early in the District's history, residents in the territory ceded from Virginia were allowed to continue voting for congressional representatives from that state, and residents of the District in the territory ceded from Maryland to do the same for their representatives. That practice ended after 1800. The District's residents were excluded from the apportionment of seats in the House that the President transmitted to Congress after the 1800 census and ceased being eligible to vote in Maryland and Virginia once the laws of these states became inapplicable to the District in early 1801. In more recent history, District residents have reacted to their disenfranchisement by petitioning Congress to reverse this disenfranchisement.

Taking the Crusade to the Congress...

In 1960, Congress adopted and the states passed the 23rd Amendment to the Constitution giving District residents the right to vote in presidential elections. This crusade continued in 1978 when Congress approved a second constitutional Amendment, this one titled "DC Voting Rights" and granting statehood and all corresponding congressional representation to the District as if it were a state. Unfortunately, this amendment failed when it earned ratification by only 16 of the required 38 states.

... and to the Courts ...

On September 14, 1998, District resident Clifford Alexander, 56 other District residents, and the District government itself filed suit in *Alexander v. Daley*. The *Alexander* plaintiffs alleged:

- The inability of District residents to vote for voting representatives and senators in Congress violates their rights to equal protection and to a republican form of government; and
- This denial also violates Article I and the 17th Amendment to the Constitution, which provide that the members of the House shall be chosen by "the People of the several States" and that senators shall come "from each State, elected by the people thereof."

On November 3, 1998, a single-judge U.S. District Court (Oberdorfer, J.) consolidated *Alexander* with *Adams v. Clinton*, a similar suit brought by 20 other DC residents. On November 6, 1999 the court granted motions by both sets of plaintiffs to appoint a three-judge U.S. District Court because the suits challenged the constitutionality of the apportionment of congressional districts.

On March 20, 2000, a 2-1 majority of the three-judge court granted defendants' motion to dismiss the claims regarding voting representation in the House and remanded the remaining claims to the

single-judge court. The principal ground for the majority's decision was its conclusion that Article I of the Constitution, which deals with elections for the House, on its face requires eligible voters to reside in a state, and the District is not a state. On remand, the single-judge court dismissed the Senate voting and other claims on the ground that plaintiffs lacked standing, there being no causal link between anything the Senate defendants did and the alleged denial of the right to vote for Senators.

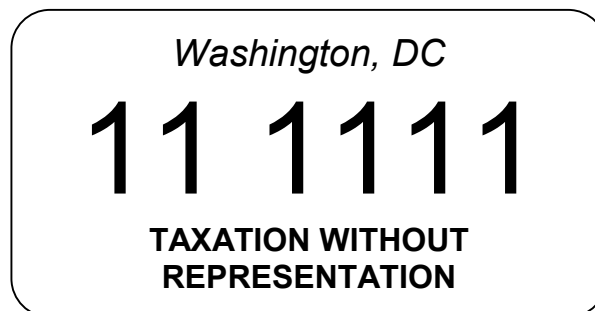
The decision of the three-judge court was appealed directly to the U.S. Supreme Court. On October 16, 2000, in an 8-to-1 vote, the Supreme Court summarily affirmed, without a written decision, the majority opinion of the three-judge court. Justice Stevens dissented, saying that he would have agreed to set the case for a full hearing. The Supreme Court's action means that it agreed with the lower court's conclusion that District residents have no constitutional right to voting representation in the House. Given this decision, on November 14, 2000, plaintiffs dismissed their pending appeal before the U.S. Court of Appeals for the DC Circuit from the decision of the single-judge court on the Senate voting issue.

... and to the Conscience of the *Public*

Currently, residents of the District of Columbia pay federal and local taxes on par with all other Americans, but have no representatives in Congress. These residents also are not equal to the residents of the U.S. territories, who are denied representation, but pay no federal income taxes. As such, the federal government perpetrates taxation without representation, the same injustice that sparked the revolution that founded this country.

After failing to find justice in Congress and the courts, the District decided to take this message to the streets – *literally*. In October 2000, the Mayor and Council announced that, effective immediately, the standard issue license plate for cars registered in the District would bear the new phrase "Taxation Without Representation" as an educational tool and reminder for national leaders and for Americans across the country.

Figure 13-3



Through this initiative and the continued efforts of organizations such as DC Vote, District residents continue their quest for the basic representation that other Americans enjoy.

The Case Against Voting Rights in Congress

"The District is not a State, and is Too Small for Two Senators"

Opponents of District residents' campaign for voting rights give two primary reasons for their opposition. First, the District is not a state, and the Constitution explicitly reserves elected representation to the states. Therefore, District residents deserve no more representation than the

residents of a territory or reservation. Second, even if one accepts the rationale that all American citizens deserve congressional representation, some argue that the small size of the District does not warrant two senators.

A Balanced Solution: Representation With or Without Statehood, and No Taxation Until Then

Among District residents, the federal government, and the American people, the common ground for agreement centers around three key points:

- The disenfranchisement of District residents was an unintended result of the Constitution's framing.
- Taxation without representation is still wrong, especially in the seat of modern democracy.
- Representation for the District can be achieved without statehood – if statehood becomes an unrealistic goal.

Based on this common ground, the District, Congress, and the courts should find agreement on one of the following options:

- **Representation without statehood.** Congress could make the District eligible for representation in both the House and Senate without actually granting statehood. Some argue that this action requires a constitutional amendment (approved by two-thirds of Congress and 38 states). However, a plausible case can be made, based on modern precedents, that Congress can grant this voting representation by act, without amending the Constitution.
- **Participation in Maryland elections.** Rather than expanding the size of the Congress in order to assign the District voting representation, the Congress could allow District residents to vote as part of Maryland, which ceded the territory that now constitutes the District. Under this arrangement District residents would gain representation through the two Senate seats currently assigned to Maryland, and House representation would be reallocated to Maryland according to population figures revised to include District residents. Because this option requires no change in the size of Congress or in the direct allocation of representatives to the District, the arguments that it requires a change to the Constitution are weaker. In addition, this option would obviously require the consent of Maryland.
- **Statehood.** To earn statehood, the District must gain the support of two-thirds of Congress and 38 states. In 1978, the Congress passed such a measure to provide representation without statehood, and, although Congress provided the required two-thirds approval, only 16 states of the required 38 provided their support. Based on this experience, a bid for statehood may prove elusive.

Although all of these options could most likely require years to effect, an interim solution can provide immediate relief. In addition to submitting voting rights legislation, Congresswoman Eleanor Holmes Norton plans to submit legislation that will relieve District residents of the obligation to pay federal income taxes until the right to vote has been accorded. Norton said that these bills would keep the District from "a double denial of equal protection." She said, "District residents are not equal to the residents of the 50 states because they pay federal income taxes but are denied representation; they also are not equal to the residents of the U.S. territories, who are denied representation, but pay no federal income taxes. Our country simply can't have it both ways. It must place us in one zone or the other."

Conclusion

At his second state of the District address, Mayor Williams likened the District to a person who, in his reckless youth, needed a watchful parent who could impart a lesson in responsibility. Over the last five years, the federal government has served as such a parent, imposing restrictions and incentives to ensure the financial and operational recovery of the District.

Now that the District has demonstrated its new-found responsibility, the Control Period will end – but the lesson should not end there. The next target should be set so that the District government may continue to evolve, demonstrate continually higher levels of responsibility, and in so doing, earn continually greater levels of autonomy. In so doing, Congress must partner with the District to pursue the solutions presented above that address the following issues:

- Congress' micromanagement of local budgeting and legislation hampers planning and disrupts service delivery.
- The large federal presence requires major service delivery for which the District receives no compensation.
- Taxation without representation in our nation's capital flies in the face of American democracy.

Beginning immediately, the federal and District governments should chart and navigate this course for the sake of local residents, the nation's capital, and American democracy.